IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 3262 of 2004

AND

WRIT PETITION NO.4320 of 2004

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WRIT PETITION NO : 3262 of 2004

Between:

A.P.Beedi Workers Union, Shramika Bhavan, Kotagalli, Nizamabad represented by its Nizamabad District Vice-President Sri M.Muthenna.

..... PETITIONER

AND

1 Bakran Beedi Works, Armoor, Nizamabad District represented by its Managing Partner Sri Ahmed Bakran.
2 Debts Recovery Tribunal, 5th Floor, Triveni Complex, Abids, Hyderabad - 500 001 rep.by its Recovery Officer.
3 State Bank of Hyderabad, Armoor Branch, Nizamabad District represented by its Branch Manager.
4 M/s S.V.S.Real Estates, Armoor, Nizamabad District represented by Sri T.Malla Reddy, S/o Narsimha Reddy, R/o H.No.1-1-5/25/15, Mahalaxmi Colony, Armoor, Nizamabad District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction more particularly one in the nature of

Writ of Mandamus (i) declaring the Auction Sale Notice issued by the 2nd Respondent dated 10-1-2003 duly published in Vartha, Telugu Daily in its issue dated 19-1-2003 proposing to hold auction sale of Land, Building properties and Godowns admeasuring 2 acres 20 guntas bearing Municipal Nos.1-1-28 to 1-1-35 situated adjacent to Munsif Magistrate Court, Armoor, Nizamabad District on 30-5-2003 at 1-30 PM and the consequential Sale Certificate issued in favour of the 4th Respondent through Sale Certificate dated 28-7-2003 as illegal, arbitrary and unconstitutional apart from being violative of principles of natural justice and against the market value of the property and in collusion with the 1st Respondent to deprive the workmen of their arrears of wages, etc. in terms of memorandum of understanding between the Management of the Bakran Beedi Works and A.P.Beedi Workers Union dated 5-4-1997 and in terms of the Memorandum of Settlement (under Section 18 (1) of the Industrial Disputes Act, 1947) dated 15-12-2003; consequently (ii) set aside the auction and sale of the property in favour of the 4th respondent; consequently (iii) direct to re-auction the property and first pay arrears of wages and other benefits payable to workmen in terms of the memorandum of understanding between the Management of the Bakran Beedi Works and A.P.Beedi Workers Union dated 5-4-1997 and in terms of the Memorandum of Settlement (under Section 18(1) of the Industrial Disputes Act, 1947) dated 15-12-2003 by treating the claim of the workmen as preferential claim over and above the secured and unsecured creditors including the 3rd respondent.

(Date in W.P. prayer is corrected as per Court order dated 22.3.2004 in WPMP.No.6677/2004).

Counsel for the Petitioner: MR.NANDIGAM KRISHANA RAO

Counsel for the Respondent No.1: MR.K.ASHOK REDDY

Counsel for the Respondent No.2: MR.K.KESAVARDHAN REDDY

Counsel for the Respondent No.3: MR.K.ASHOK KUMAR

Counsel for the Respondent No.4: MR.S.RAVI

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WRIT PETITION NO : 4320 of 2004

Between:

Bakran Beedi Works represented by Managing Partner. I. Hussain Bakaram S/o Late Abdul Bakaram, R/o D. No. 8-2-697/1, Banjara Hills, Hyderabad.

..... PETITIONER

AND

1 Inspector General of Registration and Stamps, A.P. NBK Estate, Golkonda X Roads, Musheerabad, Hyderabad.
2 The Sub-Registrar, Armoor Nizamabad District. A.P.
3 Mr. S.M. Hussain, Recovery Officer, Debts Recovery Tribunal, 5th Floor Palace Heights, Abids, Hyderabad.
4 Sri T, Malla Reddy S/o Sri Narasimha Reddy, R/o Venkateswara Colony Beside Bus Depot, armoor, Nizamabad District
5 Sri D. Radha Krishna, R/o Teachers' Colony Armoor, Nizamabad District.
6 State Bank of Hyderabad rep by Chief Manager, Armoor Branch, Armoor, Nizamabad District A.P.,
7 Mr. D. Srinivas Varma Consulting Engineer/Licenced Surveyor, C/o S.V. Associates, Opp Court, Armoor, Nizamabad District (A.P)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order or direction more particularly one in the nature of Writ of Mandamus declaring 1) the action of Respondent NO.1 in issuing the impugned proceedings No. MV3/19560/03 dated 12th February, 2004 as illegal arbitrary and consequently set a side the same and further direct the 1st respondent to initiate action against the Respondnet No.2, for issuing different valuation Certificates in respect of the properties of the petitioners to facilitate under valuing the property by Respondent No.6 (2) and declare the action of the State Bank of Hyderabad, Armoor Branch, rep by Chief Manager, in not furnishing the statement of accounts in respect of the petitioner liability or otherwise to facilitate the petitioners to settle the same by paying the amounts legally payable and also set a side the sale of the properties of the petitioner which is the subject matter of auction sale notice issued by the DRT dated 10-01-2003 as published in Vartha Telugu Daily in its issue dated 19-01-2003 which includes the land building, properties, go downs admeasuring Ac 2-20 gts bearing Municipal Nos.1-1-28 to 1-1-35 situated adjacent to Munsiff Magistrate Court Armoor Nizamabad District.

Counsel for the Petitioner: MR.K.ASHOK REDDY

Counsel for the Respondent Nos.1 and 2: GP FOR REVENUE

Counsel for the Respondent Nos.3 and 6: MR.K.KESAVARDHAN REDDY

Counsel for the Respondent Nos.4 and 5: MR.S.RAVI

Counsel for the Respondent No.7: None appeared.

The Court made the following:

COMMON ORDER: (per GB.J.)

Both the Writ Petitions can be disposed of by a common order.

2. Writ Petition No.3262 of 2004 was filed by A.P. Beedi Workers Union challenging the auction conducted by the Debts Recovery Tribunal in pursuance of a decree passed by it and for a consequential direction to implement the Memorandum of Settlement entered into between the Management of the Bakran Beedi Works and A.P. Beedi Workers Union under Section 18(1) of the Industrial Disputes Act, 1947, (for short the Act) dated 15.12.2003.

3. The second Writ Petition viz., Writ Petition No.4320 of 2004 was filed by the Management of Bakran Beedi Works challenging the sale conducted by the Debts Recovery Tribunal.

4. First we deal with the Writ Petition filed by A.P. Beedi Workers Union. It is the case of the Workers Union that there are about 8000 workmen employed in the industry and the Management has to pay the arrears of wages and other service benefits to the extent of over Rs.3,20,00,000/-. While so, an agreement was entered into between the Management and the Workers Union on 5.4.1997 and 15.12.2003 under Section 18(1) of the Act, in which the Management has agreed to pay certain amounts to the workmen. However, in the meanwhile the Debts Recovery Tribunal, on the basis of a suit O.A.No.963 of 1999 filed by the State Bank of Hyderabad, Nizamabad, proceeded against the properties of the Management and passed a decree and in pursuance of the decree in the suit, the properties were auctioned on 30.5.2003 and the maximum bid offered by the purchaser was Rs.1,02,00,000/-. At this point of time the Writ Petition was filed by the Workers Union contending that they have to receive an amount of over Rs.3,00,00,000/- and if the properties are auctioned at a lesser value and if the purchaser is allowed to enjoy the properties, they are left with no remedy at all. Therefore, they sought the directions to cancel the sale effected through the Debts Recovery Tribunal. It is also contended that the properties were highly under-valued and that the Management and the purchaser colluded together so as to deny the wages and other benefits to the workmen. Therefore, the sale is

fraught with fraudulent intention. It is also contended that the Sub-Registrar, Armoor, issued a Valuation Certificate for Rs.9,00,00,000/- whereas the properties were sold for only Rs.1,02,00,000/- and therefore the sale itself is highly irregular and illegal and hence it is liable to be set aside.

5. It is now brought to the notice of this Court that the sale has become final and the properties have also been registered in favour of the purchaser viz., M/s S.V.S. Real Estates, Armoor, and that the Bank has also appropriated the decretal amount.

6. The question that calls for consideration is whether this Court can interfere at this stage under Article 226 of the Constitution of India to protect the interest of the workmen.

7. Admittedly the agreements were entered into under Section 18(1) of the Act between the Management and the Workers Union right from 1997 up to 2003, but no steps were taken by the Union by approaching the appropriate Forum under the Industrial Disputes Act for realising the amount payable by the Management, and it is only after the auction was held and the same has become final and the properties were registered in favour of the purchaser, the Workers Union approached this Court contending that the auction is collusive, illegal and contrary to law. We are unable to accept this contention for the reason that the petitioner has not moved the appropriate authority at the relevant time. The learned counsel for the petitioner, however, tried to rely on the decision of the Supreme Court in WORKERS OF ROHTAS INDUSTRIES LIMITED vs. ROHTAS INDUSTRIES LIMITED[1]. In the said case the workers of the company had filed Writ Petition claiming the wages out of the sale proceeds of the stocks of finished products of the company available for disposal. In spite of the direction of the Supreme Court, the wages due to the workmen were not paid and on the other hand the Government of Bihar declared the industry to be a sick industry by which the liability to pay wages to the workmen could not be enforced. Even in respect of finished goods also the Banks laid priority claim on the premise that the goods are pledged to the Bank. Under those circumstances the Supreme Court held that the unsold stocks shall be sold and the amount realized therefrom shall be paid to the workmen towards their wages. The facts are quite distinguishable in this case. Here it is

not the case of the Workers Union that the unsold stocks were lying in the premises, but, on the other hand the entire properties were sold for a song, which cannot be interfered by this Court either under Article 226 or Article 227 of the Constitution of India. Therefore, it is for the workmen to approach the appropriate Forum under Industrial Disputes Act and secure their payment. If the sale has become final, it is open for the workmen to proceed against the employer personally. But these are all the matters which have to be decided by the appropriate Forum but not the proceedings under Article 226 of the Constitution. Though we sympathise the precarious situation faced by the workmen, yet we find that they have not taken appropriate steps at the right time, and further when the sale has become final, it will not be appropriate for this Court to interfere and set the clock back at this moment. Thus, we are not inclined to interfere with the matter.

8. Accordingly Writ Petition No.3262 of 2004 is dismissed. No costs. However, we leave it open to the Workers Union to approach the appropriate Forum, which is available to them for recovery of the amounts.

9. As regards Writ Petition No.4320 of 2004 filed by the Management is concerned, the sale has become final and if it is so aggrieved by the sale, they can approach the appropriate authority or the Forum under the Income Tax Rules or any other Rules, if it so chooses, by filing an appeal, but the same cannot be interfered by this Court under Article 226 of the Constitution of India. Thus, we do not find any merit in the Writ Petition. Accordingly the Writ Petition is dismissed. No costs.

(G.BIKSHAPATHY, J.)

17th January, 2005.

(P.S.NARAYANA, J.)

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1.The Recovery Officer, Debts Recovery Tribunal, 5th Floor, Triveni Complex, Abids, Hyderabad - 500 001.
2.State Bank of Hyderabad, Armoor Branch, Nizamabad District represented by its Branch Manager.
3.The Inspector General of Registration and Stamps, A.P. NBK Estate, Golkonda X Roads, Musheerabad, Hyderabad.

4.The Sub-Registrar, Armoor, Nizamabad District.

5.The Chief Manager, State Bank of Hyderabad, Armoor Branch, Armoor,

Nizamabad Division.

6.2 CCs to G.P. for Revenue, High Court of A.P. Hyderabad. (OUT)

7.2 CD copies.